JOHN W. EASTLAND ET AL.

IBLA 74-43, 48, 49, 50, 57, 80, 81 — Decided March 25, 1976

Appeals from decisions of the Alaska State Office, Bureau of Land Management, holding notices of location unacceptable for recordation or rejecting purchase applications.

Affirmed.

1. Alaska: Statehood Act -- Applications and Entries: Filing -- Segregation: Filing of Application -- State Selections

   A selection application under the Alaska Statehood Act filed in the appropriate Bureau of Land Management office for properly described land segregates the land from all appropriation based upon subsequent application or settlement and location.

2. Alaska: Headquarters Sites -- Alaska: Homesites -- Alaska: Trade and Manufacturing Sites -- Settlements on Public Lands

   A settlement claim initiated after a state selection application is filed and the land segregated from appropriation creates no rights in the settler.

3. Alaska: Generally -- Alaska: Headquarters Sites -- Alaska: Homesites -- Alaska: Trade and Manufacturing Sites

   Any right gained under a notice of location for a trade and manufacturing site or a homesite as required by the Act of April 29, 1950, 43 U.S.C. § 687a-1 (1970), is personal to the party filing the notice.

4. Alaska: Generally -- Alaska: Possessory Rights -- Alaska: Trade and Manufacturing Sites

   A trade and manufacturing site notice of location not supported by actual settlement and occupancy authorized by 43 U.S.C. § 687a (1970) does not change the status of the public lands.

5. Alaska: Statehood Act -- Applications and Entries: Filing

   A selection application under the Alaska Statehood Act that describes land according to an approved protraction diagram properly describes those lands if the official plat of survey has not been accepted.

APPEARANCES: Doris Loennig, Esq., Fairbanks, Alaska, for Lowell H. Winner, Carl L. Larsen and George H. Becker; other appellants pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Appellants, listed in the appendix to this decision, have each appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), holding their notices of location unacceptable for recordation or rejecting their applications to purchase separate tracts of land because Sec. 36, T. 6 S., R. 8 W., Fairbanks Meridian, Alaska, in which the tracts lie, was segregated from all forms of appropriation by Alaska State selection application F-024563. That selection application, filed on November 25, 1959, was amended on October 11, 1962, to include all land in T. 6 S., R. 8 W., F.M., excluding any prior rights, claims or patented lands. The decisions also stated that the Alaska Native Claims Settlement Act withdrew the land from all forms of appropriation for possible selection by the Village of Nenana. 43 U.S.C. § 1610 (Supp. III, 1973); P.L.O. 5184, 37 F.R. 5587 (1972).

Appellants filed for either homesites or trade and manufacturing sites pursuant to 43 U.S.C. § 687a (1970). In each case a notice of location was filed after Alaska had amended its State selection application. The lands involved in each case were also in Seldon H. Klinke's trade and manufacturing site F-028081 which was initiated in 1961. Each appellant here had a lease-purchase

contract with Klinke or Klinke's wife, Grace Clement, who had promised appellants that title to the property being leased would be conveyed to each after the United States granted Klinke a patent for the trade and manufacturing site. 1/ The Board rejected Klinke's application to purchase because he had used the land as the stock in trade of a business operation rather than for purposes of trade, manufacture, or other productive industry within the meaning of the trade and manufacture site statute. Seldon H. Klinke, 7 IBLA 83, 84 (1972).

In order to appropriate public land, a person must initiate his claim on land that is open to application, location or settlement. The ultimate issue in this case is whether any of the appellants' attempts to settle and appropriate public land were initiated on land open to appropriation.

[1] Under the Alaska Statehood Act, 72 Stat. 339, 48 U.S.C. Prec. § 21 (1970), Alaska may select up to 102,550,000 acres of public land that is vacant, unappropriated and unreserved at the time of the selection. 43 CFR 2627.3(a). A selection application under the Alaska Statehood Act, filed in the appropriate Bureau of Land Management Office, for properly described land, segregates the land from all appropriation based upon application or settlement and location, including mining location. 43 CFR 2627.4(b). The segregation terminates automatically if, after notice from BLM, Alaska fails to publish notice of the selection. 43 CFR 2627.4(b), (c).

In order for any of the appellants' settlement claims to be potentially valid: (1) their settlement must have preceded the filing of the state selection and other segregation or withdrawal of the land, and protection of their settlement by the filing of a notice of location or purchase application must have been made in compliance with the Act of April 29, 1950, 43 U.S.C. § 687a-1 (1970); or (2) the filing of the state selection must not have segregated the land from subsequent appropriation, or its segregative effect ended prior to the initiation of appellants' claims.

1/ These facts are asserted by most of the appellants, or are reflected in the recommended decision by hearing examiner (now Administrative Law Judge) Robert W. Mesch and adopted by this Board in Seldon H. Klinke, 7 IBLA 83, 86 (1972).

[2] None of the appellants in this case personally have rights that precede the 1962 amendment of the state selection. According to assertions in the record by each appellant, all of the settlements involved in this decision occurred after October 11, 1962, except Edith George James (IBLA 74-50), who asserted in her appeal that occupancy began in June 1962. However, she did not file a notice of location, and her purchase application was not filed until June 28, 1972. The earliest notice of location was filed by Cecil F. Gates on July 15, 1968 (IBLA 74-43). A settlement claim initiated after a state selection application was filed, and the land segregated from appropriation, creates no rights in the settler. 43 CFR 2627.4(b); Helena M. Schwiete, 14 IBLA 305 (1974). No credit can be given for occupancy of a headquarters site, a trade and manufacturing site, or a homesite, that occurred more than 90 days prior to the filing of a notice of location. 43 U.S.C. § 687a-1 (1970); Kennecott Copper Corp., 8 IBLA 21, 32, 79 I.D. 636, 641 (1972). Therefore, as Edith George James failed to meet this requirement, any occupancy by her prior to the state selection cannot be considered.

[3] None of the appellants benefit from Klinke's prior claim. Although they were leasing land from Klinke, who filed a trade and manufacturing site notice of location in 1961, they gained no rights from his notice or any attempted settlement by him. In Kennecott Copper Corp., supra, the Board rejected the contention that a notice of location, or rights under a notice of location, were transferable. "Any right under a notice of location required by the Act of April 29, 1950 [43 U.S.C. § 687a-1 (1970)], is personal to the party filing the notice. * * * No other person is entitled to any rights under that notice of location * * *." Id. at 32, 79 I.D. at 641. Appellants cannot claim any rights to the public land through Klinke.

[4] Can appellants benefit indirectly from Klinke's notice of location? A state selection in Alaska can only be made for land that is "vacant, unappropriated and unreserved at the time of its selection." 48 U.S.C. Prec. § 21 (1970). Appellants argue that Klinke's filing of a notice of location for a trade and manufacturing site prevented the land from being "vacant, unappropriated and unreserved, and consequently, the state selection did not segregate the land from appropriation." Unlike other ways of initiating rights to public lands, such as homestead entries (see State of Alaska, 6 IBLA 58, 66-70, 79 I.D. 391, 393-94 (1972)), the filing of a notice of location under the Act of April 29, 1950, 43 U.S.C. § 687a-1, creates no rights in the person making the location, except the right to purchase the claim if he fully complies with the law within the 5-year period permitted by statute. Margaret L. Klatt, 23 IBLA

59 (1975); Kennecott Copper Corp., supra; Peter Pan Seafoods, Inc. v. Shimmel, 72 I.D. 242 (1965); Clayton E. Racca, 72 I.D. 239 (1965). Congress intended that the filing provision only provide information necessary for the administration of public lands. Filing a notice of location for a settlement claim in Alaska is not an alternative way to acquire rights to public lands. Loran John Whittington, A-28823 (August 18, 1961). Rights to a trade and manufacturing site, headquarters site, or homesite claim are gained by actual occupancy and settlement, not by mere filing of an application. Id. Since Klinke's claim has already been declared void, Seldon H. Klinke, supra, we do not have to reach the question of what type of occupancy under a notice of location required by 43 U.S.C. § 687a-1 (1970), makes land no longer "vacant, unappropriated and unreserved," for the purposes of an Alaska State selection. See Fred J. Rand, A-30228 (March 26, 1965); Smith v. Crocker, A-26189 (May 28, 1951). 2/ A trade and manufacturing site, homesite, or headquarters site notice of location, not supported by actual settlement and occupancy authorized by the Act, does not change the status of the public lands. Vernard E. Jones, 76 I.D. 133, 137 (1969); Peter Pan Seafoods, Inc. v. Shimmel, supra; Clayton E. Racca, supra; but cf. United States v. Foresyth, 15 IBLA 43, 54 (1974). Despite Klinke's notice of location, when Alaska filed its state selection on October 11, 1962, that action had the effect of segregating the land from appropriation based upon application or settlement and location. 43 CFR 2627.4(b). See also Margaret L. Klatt, supra.

Some of the appellants contend that the state selection application did not segregate the land from appropriation because the application misdescribed the lands filed for and the application lapsed. Departmental regulations provide:

> Lands desired by the State under the regulations of this part will be segregated from all appropriations based upon application or settlement and location, including locations under the mining laws, when the State files its application for selection in the proper office properly

---

2/ Because appellants can claim no rights based on Klinke's notice of location, they are not in any position to assert rights in themselves which would relate back to Klinke's notice of location, nor can his claim constitute an appropriation of the land sufficient to defeat the State's selection right. Klinke's notice would not constitute a bar to approval of the selection application unless his claim had been perfected for purchase based upon a right which would relate back to a time prior to the State's application.

> describing the lands as provided in § 2627.3(c)(1) (iii), (iv), and (v). Such segregation will automatically terminate unless the State publishes first notice as provided by paragraph (c) of this section within 60 days of service of such notice by the appropriate officer of the Bureau of Land Management. [Emphasis added.]

43 CFR 2627.4(b).

[5] Appellants allege that Alaska erred in failing to describe the lands as being "surveyed." Appellants have failed to show that the application did not meet description requirements. Regulation 43 CFR 2627.3(c)(1) provides that applications for selection must contain the following:

> (iii) If the selected lands are surveyed, the legal description of the lands in accordance with official plats of survey.
>
> (iv) If the selected lands are unsurveyed and are described by approved protraction diagrams of the rectangular system of surveys, such description is required.
>
> (v) If the selected lands are unsurveyed and are not described by approved protraction diagrams, a description of the lands and a map or maps, in duplicate, sufficient to permit ready identification of the location, boundaries, and area of the lands.

At the time the selection application here was made, a protraction diagram had been approved, 25 F.R. 9612, September 1, 1960, but the official plat had not been accepted. The regulations, therefore, required that the application describe the lands in accordance with the protraction diagram since an official plat of survey was not available. 43 CFR 2627.3(c)(1)(iv). Since Alaska described the lands according to the protraction diagram, the description was proper. Publication of the application was also made after notice, and the application did not lapse.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, we affirm the decisions rejecting the applications, holding the notices

of location unacceptable for recordation, and canceling the claims in the cases listed in the appendix to this decision. 3/

Joan B. Thompson
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Douglas E. Henriques
Administrative Judge

3/ Our decision, of course, pertains only to the right to acquire title under these applications. If title passes to the State or to a Native Corporation, nothing in this decision would preclude appellants from attempting to seek appropriate relief from such party under applicable law.

APPENDIX

IBLA 74-43	James W. Eastland	F-19064
	Lowell H. Winner	F-19065
IBLA 74-48	Cecil F. Gates	F-1307
IBLA 74-49	George H. Becker	F-19067
IBLA 74-50	Edith George James	F-19157
IBLA 74-57	Carl H. Larsen	F-19091
IBLA 74-80, 81	George E. Vey	F-19278, 19068